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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,267	07/31/2003	Kenneth H. Kohlndorfer	816 DIV2	3787

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EXAMINER	
NGUYEN, JOHN QUOC	

ART UNIT	PAPER NUMBER
3654	

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/631,267	KOHLNDORFER ET AL.	
	Examiner	Art Unit	
	John Q. Nguyen	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 October 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *29,30 and 33-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *29,30, 33-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Applicant's affirmation of the election without traverse of claims 29, 30, 33-36 in the reply filed on 6/18/04 is acknowledged. Claims 27, 28, 31, 32 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 29 and 34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Said subject matter is "at a level of only about the first level" (claim 29) and "a load equal to or slightly greater than the level of the reaction force" (claim 34).

In claim 33, line 4, it appears that "received in" should be changed to –to receive--.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 35 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 35 is not further limiti8ng claim 34.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 29,30, 34, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebner et al (US 5788176).

Ebner et al discloses an apparatus having substantially all the claimed features including a frame 10, force limiting means/torsion bar 30, and spool 12. Elements such as 32 and 70 are made from plastic/resin. It is old and well known to use plastic/resin material instead of metal when the plastic/resin meets strength requirements to reduce weight and manufacturing costs, and eliminate corrosion. In view of the elements already made from plastic, it would have been obvious to a person having ordinary skill in the art to further make the frame from plastic/resin if the plastic/resin can meet the strength requirements ("first level pull") to obtain the above advantages. To make the thus modified frame withstand only about the first level would have been an obvious matter of design choice to a person having ordinary skill in the art based on factors such as preference, design criteria, space optimization (frame not bigger than required), and costs (optimally sized frame reduces material requirements and thus costs). Relative to claim 34, it is deemed inherent that the frame can withstand a load equal to or greater than the force of the torsion bar.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Ebner (US 5788176).

Ebner et al discloses an apparatus having substantially all the claimed features including a frame 10, force limiting means/torsion bar 30, and spool 12. It is deemed inherent that the frame can withstand a load equal to or greater than the force of the torsion bar.

Claim 33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebner et al (US 5788176) in view of GB 2020963.

The GB reference discloses another similar apparatus having upper (9, 11) and lower mounting members (10, 12) received in respective cavities/holes 15-18. That the positions of the mounting members and cavities are switched (i.e. mounting members on plate 14 and cavities on retractor frame 1) would have been an obvious matter of design choice to a person having ordinary skill in the art based on factors such as preference, design criteria, space optimization, and costs. It would have been obvious to a person having ordinary skill in the art to alternatively provide the apparatus of Ebner et al with mounting members and cavities as taught by the GB apparatus to facilitate mounting the apparatus. That the cavities/holes 15-18 are cup-shaped (i.e. surrounding

the mounting members, therefore being "cup-shaped") would have been obvious to a person having ordinary skill in the art to reduce movement of the mounting members when in the cavities. That there's a single lower mounting member would have been an obvious matter of design choice to a person having ordinary skill in the art based on factors such as preference, design criteria (such as when the strength requirement can be met by one lower mounting member), space optimization, and costs.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 29, 30, 34, 35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6419178. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that claims 29 and 30 are encompassed in claims 1-16 of the above patent. To make the thus modified frame withstand only about the first level would have been an obvious matter of design choice to a person having ordinary skill in

the art based on factors such as preference, design criteria, space optimization (frame not bigger than required), and costs (optimally sized frame reduces material requirements and thus costs). Relative to claim 34, it is deemed inherent that the frame can withstand a load equal to or greater than the force of the torsion bar.

Claim 29, 30, 33-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6722601 in view of Ebner et al (US 5788176). Claims 1-9 of the above patent disclose substantially all the claimed features. Ebner et al is cited to show the old and well known torsion bar. It would have been obvious to a person having ordinary skill in the art to provide the apparatus of the above claims 1-9 with a torsion bar as taught by Ebner et al to absorb energy as is old and well known in the art. To make the thus modified frame withstand only about the first level would have been an obvious matter of design choice to a person having ordinary skill in the art based on factors such as preference, design criteria, space optimization (frame not bigger than required), and costs (optimally sized frame reduces material requirements and thus costs). Relative to claim 34, it is deemed inherent that the frame can withstand a load equal to or greater than the force of the torsion bar.

Applicant's arguments filed 10/27/04 have been fully considered but they are not persuasive.

As noted in the rejection above, to make the thus modified frame withstand only about the first level would have been an obvious matter of design choice to a person having ordinary skill in the art based on factors such as preference, design criteria, space optimization (frame not bigger than required), and costs (optimally sized frame reduces material requirements and thus costs). Relative to claim 34, it is deemed inherent that the frame can withstand a load equal to or greater than the force of the torsion bar.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

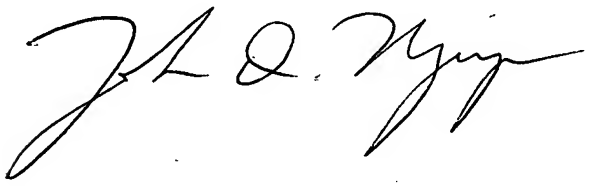
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Q. Nguyen whose telephone number is (703) 308-2689. The examiner can normally be reached on Monday-Friday from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Matecki, can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John Q. Nguyen
Primary Examiner
Art Unit 3654